

1 Hon. Ronald B. Leighton
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7 **UNITED STATES DISTRICT COURT**
8 **WESTERN DISTRICT OF WASHINGTON**

9 MARK HOFFMAN, on behalf of himself
10 and all others similarly situated,

11 Plaintiff,

12 v.

13 HEARING HELP EXPRESS, INC.,

14 Defendant.

15 CASE NO. 3:19-cv-05960-RBL

16 **DECLARATION OF RICHARD A.**
CALLIGAN, III IN SUPPORT OF
DEFENDANT HEARING HELP
EXPRESS, INC.'S OPPOSITION
TO PLAINTIFF'S MOTION TO
COMPEL

17 NOTED FOR CONSIDERATION:
18 May 22, 2020

19 ORAL ARGUMENT REQUESTED

20 I, Richard A. Calligan, III, declare as follows:

21 1. I am over 18 years of age. I have personal knowledge of the facts set forth in this
22 declaration and, if called as a witness, could and would testify competently thereto.

23 2. I am currently employed by Hearing Help Express, Inc. ("Hearing Help"). I am
24 the Information Technology & Logistics Manager (also referred to as the IS and Operations
25 Manager) at Hearing Help and have held this position since March of 2017. I have been
26 employed by Hearing Help since 2000 and have held various positions in the information
27 technology sector.

28 3. Part of my job responsibilities include supporting employees for their technology
29 needs, working with technology vendors regarding the software products used by Hearing Help,

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31 IN SUPPORT OF DEFENDANT'S OPPOSITION TO
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36 1001 Fourth Avenue, Suite 4050
37 Seattle, Washington 98154-1000
38 (206) 386-7353

1 ensuring all systems run smoothly, creating and maintaining integrations for core systems,
 2 adding functionality to systems, and working with data for all business units.

3 4. As part of my responsibilities, I am familiar with the dialing software used by
 4 Hearing Help to place outbound calls, including the accessibility of information on the software
 5 and what information is stored on the software. Hearing Help currently uses a software system
 6 called PureCloud that is made by the Genesys company. It is integrated into Hearing Help's
 7 customer relationship manager system called FreshSales, a product by FreshWorks. I understand
 8 that PureCloud is in the process of being renamed to Genesys Cloud.

9 5. I have reviewed the Requests for Production of Documents, Set One that Plaintiff
 10 propounded on Hearing Help, including Request for Production No. 31. I understand that
 11 through Request for Production No. 31, Plaintiff is seeking documents relating to all calls
 12 Hearing Help made on the "Genesys dialing equipment." Hearing Help started using the
 13 PureCloud software (provided by the Genesys company) in March of 2018. From March 2018
 14 forward, Hearing Help has made all of its sales calls (regardless of the source of the lead) using
 15 the PureCloud software. From approximately January 2019 forward, Hearing Help has made all
 16 calls (regardless of call content or purpose of the call) using the PureCloud software. Therefore,
 17 calls made on the PureCloud software from approximately January 2019 to present include non-
 18 telemarketing calls, calls made to individuals whose information did not come from Triangular,
 19 calls made to current customers of Hearing Help, and returning calls of individuals who
 20 contacted Hearing Help first.

21 6. I am also familiar with Hearing Help's relationship with Triangular Media Corp.
 22 ("Triangular") and understand that Triangular was hired to generate leads for Hearing Help. All
 23 telemarketing calls made to the Triangular leads were made using the PureCloud software. This
 24 includes calls made to Plaintiff Mark Hoffman. Triangular sold over 22,000 leads to Hearing
 25 Help. Approximately 72,000 calls were made to the Triangular leads. Since Hearing Help began
 26 using the PureCloud software, there have been more than 1.7 million outbound calls, which

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1 includes calls to current customers and general calls Hearing Help employees make not relating
 2 to telemarketing.

3 7. Request for Production No. 31 asks for the following electronic data/documents
 4 with respect to all calls made using PureCloud from March 2018 to present:

- 5 a. Date and time each call was place;
- 6 b. Number of calls placed;
- 7 c. Telephone numbers and area codes to which each call was placed;
- 8 d. Whether each call was made via an ATDS, predictive dialer, in preview
 mode, manually, and/or with a prerecorded message or artificial voice;
- 9 e. The result of each call (e.g. no answer, message left, etc.);
- 10 f. The content of each call;
- 11 g. Identifying information for the person who received the call (e.g. name,
 address, email address, etc.), and, if different, identifying information for
 the person(s) to whom the calls were intended to be placed;
- 12 h. Telephone numbers for all outgoing telephone lines that were used to
 place the calls; and
- 13 i. Identity of the companies or carriers that were used to place the automated
 call;
- 14 j. Any other information regarding the automated calls (e.g. reports, data
 compilations, verifications, electronic signature records, transmission
 reports, recordings, etc.).

22 8. Hearing Help has already prepared and produced a spreadsheet to Plaintiff with
 23 some call details for all calls made to the Triangular leads, including Plaintiff. The spreadsheet
 24 provides the information listed in subsections (a)-(c) and (h) for all calls made to all of the
 25 Triangular leads. As to subsection (i), Hearing Help placed all of its own calls to the Triangular
 26 leads using the PureCloud software. With respect to subsection (d), I do not believe that Hearing
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1 Help ever used predictive dialing. In addition, it is my understanding that Hearing Help did not
 2 use a prerecorded message or an artificial voice when communicating with leads on live phone
 3 calls.

4 9. Hearing Help also produced all documents reflecting information sought in
 5 subsections (d) – (g) and (j) as to Plaintiff.

6 10. Obtaining the information sought in subsections (d) – (g) and (j) for all calls made
 7 to the Triangular leads (or for all of the 1.7 million calls made on the PureCloud software) would
 8 take a significant amount of time. Specifically, it would take me approximately 10 hours to first
 9 tie-in the lead records on FreshSales with the PureCloud Software. In order to determine if any
 10 additional data could be exported that was not already produced in the spreadsheet mentioned
 11 above, I selected one month to see if I could export data for all calls made during this month. It
 12 appears that I can, but it will take approximately 4 hours of time for each month to export,
 13 download, and save this data. From March 2018 to present, I estimate this would take
 14 approximately 108 hours plus the additional 10 hours noted above. However, the PureCloud
 15 software continuously changes, including features that may impact the export functions. There is
 16 a chance it could take longer than this and it is possible that I will not be able to export all of this
 17 data for each month.

18 11. My primary responsibility is to ensure that the technology for the company runs
 19 smoothly each and every day. Due to my current job responsibilities, I am unable to solely focus
 20 on this task for 164 hours straight. Instead, I can only devote approximately 6 hours per week on
 21 this task. I estimate it would take me approximately 4-5 months to complete this. I am the only
 22 person at the company who would be able to retrieve this information.

23 12. With respect to subsection (j), and in particular for the recordings, to my
 24 knowledge the only way to retrieve recordings is to separately download each recording for each
 25 call, which would take approximately on average 5 minutes per call. In all likelihood, it could
 26 take longer for some of the calls. If a call was not answered there would be no recording.

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1 However, it would take approximately one minute to review the call record to determine if there
2 is or is not a recording. Therefore, I estimated approximately 5 minutes per call record. Given
3 that there are approximately 72,000 calls made to the Triangular leads, this task would take over
4 6,000 hours of time.

5 I declare under penalty of perjury under the laws of the United States of America that the
6 foregoing is true and correct.

7 Executed on May 18, 2020, at DeKalb, Illinois.

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10 By: 
Richard A. Calligan, III

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DECLARATION OF RICHARD A. CALLIGAN, III
IN SUPPORT OF DEFENDANT'S OPPOSITION TO
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Declaration of Service

I certify that on this day, I electronically filed the foregoing with the Clerk of the Court using CM/ECF system which will send notification of such filing to the following:

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Attorneys for Plaintiff

Signed at Seattle, Washington this 18th day of May 2020.

/s/ David E. Crowe
David E. Crowe

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